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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

AT SPOKANE

KEITH LANDRUS, Plaintiff, vs. **MIDLAND CREDIT MANAGEMENT, INC., AND MIDLAND FUNDING, LLC,** Defendants.	)	Case No. **COMPLAINT** **TRIAL BY JURY DEMAND**

NATURE OF ACTION

1. Plaintiff Keith Landrus ("Plaintiff") brings this action against Midland Credit Management Inc., ("MCM") and Midland Funding, LLC ("Midland Funding") (collectively "Defendants") under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*.

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JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff's action occurred in this district, where Plaintiff resides in this district, and where Defendants transact business in this district.

THE FAIR DEBT COLLECTION PRACTICES ACT

4. Congress enacted the FDCPA in order to eliminate "abusive debt collection practices by debt collectors [and] to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1179-80 (9th Cir. 2006) (citing 15 U.S.C. § 1692(e)).

5. To protect consumers and ensure compliance by debt collectors, "the FDCPA is a strict liability statute." *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 948 (9th Cir. 2011).

6. Strict liability enhances "the remedial nature of the statute," and courts are "to interpret it liberally" to protect consumers. *Clark*, 460 F.3d at 1176.

7. Violations of the FDCPA are assessed under the least sophisticated consumer standard which is "'designed to protect consumers of below average

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sophistication or intelligence,' or those who are 'uninformed or naïve,' particularly when those individuals are targeted by debt collectors." *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1061 (9th Cir. 2011) (quoting *Duffy v. Landberg*, 215 F.3d 871, 874-75 (8th Cir. 2000)).

8. "An FDCPA Plaintiff need not even have actually been misled or deceived by the debt collector's representation; instead, liability depends on whether the *hypothetical* 'least sophisticated debtor' likely would be misled." *Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109, 1117-18 (9th Cir. 2014) (emphasis in original).

9. "In addition, by making available to prevailing consumers both statutory damages and attorneys' fees, Congress 'clearly intended that private enforcement actions would be the primary enforcement tool of the Act.'" *Id.* (quoting *Baker v. G.C. Servs. Corp.*, 677 F.2d 775, 780-81 (9th Cir. 1982)).

10. "[B]ecause the FDCPA is a remedial statute aimed at curbing what Congress considered to be an industry-wide pattern of and propensity towards abusing debtors, it is logical for debt collectors—repeat players likely to be acquainted with the legal standards governing their industry—to bear the brunt of the risk." *Clark*, 460 F.3d at 1171-72; *see also FTC v. Colgate–Palmolive Co.*, 380 U.S. 374, 393 (1965) ("[I]t does not seem unfair to require that one who

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deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.") (internal quotations omitted).

PARTIES

11. Plaintiff Keith Landrus ("Plaintiff") is a natural person who at all relevant times resided in the State of Washington, County of Spokane, and City of Spokane.

12. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

13. MCM is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

14. MCM is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

15. Midland Funding is an entity who acquires debt in default principally for collection purposes, and who at all relevant times was engaged in the business of directly or indirectly attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

16. Midland Funding is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

17. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt.

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18. Plaintiff's alleged obligation arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, a personal credit account originally with HSBC (the "Debt").

19. MCM uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

20. Midland Funding purchases debts once owed or once due, or asserted to be once owed or once due, a creditor.

21. Midland Funding's principal purpose of acquiring the Debt was for debt collection.

22. The principal purpose of Midland Funding's business is to acquire defaulted debts in order to facilitate their collection for profit.

23. Midland Funding acquired Plaintiff's Debt when it was allegedly in default.

24. Midland Funding engaged MCM to collect the Debt from Plaintiff on its behalf.

25. On or about June 8, 2016, MCM, itself and on behalf of Midland Funding, sent Plaintiff a letter in an attempt to collect the Debt.

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26. A true and correct copy of the June 8, 2016 collection letter is attached to this complaint as Exhibit A.

27. The June 8, 2016 letter identified the current balance as $1,002.63 and identified the principal balance as $690.04 and MCM's interest balance as $312.59. Exhibit A.

28. The June 8 letter also stated that the interest rate on the Debt was 12%. Exhibit A.

29. However, upon information and belief, the Debt would not increase any further due to accrual of interest.

30. On June 17, 2015, MCM, itself and on behalf of Midland Funding, sent Plaintiff a letter in an attempt to collect the same Debt.

31. A true and correct copy of MCM's June 17, 2016 letter is attached to this complaint as Exhibit B.

32. Despite listing interest charges on the Debt and a rate of 12%, the June 17, 2015 letter listed the exact same balance, principal, interest amount and rate. Exhibit B.

33. Upon receipt of the June 8, 2016 letter, Plaintiff was, and the least sophisticated consumer would be, confused whether the balance of the Debt would increase due to the purported 12% interest rate.

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34. MCM did nothing to clarify whether interest would or would not accrue on the Debt until it sent Plaintiff a letter dated February 22, 2017, which explained that the 12% rate was a historic rate used to calculate the still-unchanged balance of $1,002.63, and that “No additional interest will be charged by MCM.”

35. At the time MCM sent the June 8, 2016 letter, the statute of limitations to collect the Debt had not yet expired.

36. However, the limitations period was set to run on June 30, 2016, given that the last payment on the Debt was on June 30, 2010.

37. In its letter, MCM stated: “The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it.” Exhibit A.

38. This statement may lead a consumer to reasonably believe that the statute of limitations had already expired on the Debt.

39. However, this representation would be false given that the limitations period had not yet expired.

40. In addition, MCM’s June 8, 2016 letter solicits payment through a few different payment options.

41. One such option, labeled Option 2, offers a 20% discount on the Debt if 6 monthly payments of $133.68 are made, with the first payment due by July 8, 2016.

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42. However, the letter does not disclose that a partial payment would revive the statute of limitations. *See* RCW § 4.16.270.

43. By omitting this material information, MCM's June 8, 2016 letter is misleading and is an unfair method to attempt to collect Plaintiff's Debt.

44. In connection with the collection of the Debt, MCM, itself and on behalf of Midland Funding, sent Plaintiff a letter dated February 22, 2017.

45. A true and correct copy of MCM's February 22, 2017 letter is attached to this complaint as Exhibit C.

46. Like the June 8, 2016 letter, the February 22, 2017 letter solicited payment, including through an installment payment plan.

47. Like the June 8, 2016 letter, the February 22, 2017 letter did not disclose that a partial payment would revive the statute of limitations on the Debt.

COUNT I
VIOLATION OF 15 U.S.C. § 1692e
MCM

48. Plaintiff repeats and re-alleges each factual allegation above.

49. The FDCPA broadly prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," 15 U.S.C. § 1692e, including "the false representation of the character, amount, or legal status of any debt," 15 U.S.C. § 1692e(2)(A), and "[t]he

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use of any false representation or deceptive means to collect or attempt to collect any debt." 15 U.S.C. § 1692e(10).

50. When a debt is past the statute of limitations, "collection efforts offer opportunities for mischief and deception." *Pantoja v. Portfolio Recovery Assocs., LLC*, 852 F.3d 679, 684 (7th Cir. 2017).

51. When faced with a settlement offer for a partial payment arrangement, "an unsophisticated consumer debtor who makes the first payment or who promises to make a partial payment is much worse off than he would have been without taking either step. If he then fails or refuses to pay further, he will face a potential lawsuit." *Id.* at 685.

52. "[T]he FDCPA prohibits a debt collector from luring debtors away from the shelter of the statute of limitations without providing an unambiguous warning that an unsophisticated consumer would understand." *Id.*

53. MCM violated 15 U.S.C. § 1692e in its June 8, 2016 letter, including by misleading the consumer that the debt was subject to increase due to accrued interest, by misleading the consumer as to whether the statute of limitation had expired on the debt, and by deceiving the consumer into making a partial payment and reviving the statute of limitations without an unambiguous disclaimer that doing so would restart the statute of limitations.

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54. MCM violated 15 U.S.C. § 1692e in its February 22, 2017 letter, including by deceiving the consumer into making a partial payment and reviving the statute of limitations without an unambiguous disclaimer that doing so would restart the statute of limitations.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that MCM violated 15 U.S.C. § 1692e;

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;

c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and

f) Awarding such other and further relief as the Court may deem just and proper.

COUNT II
VIOLATION OF 15 U.S.C. § 1692f
MCM

55. Plaintiff repeats and re-alleges each factual allegation above.

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56. The FDCPA broadly prohibits a debt collector from using any "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.

57. MCM violated 15 U.S.C. § 1692f in its June 8, 2016 letter, including by soliciting a partial payment of the debt from the consumer, thus luring the consumer away from the shelter of the statute of limitations, without providing an unambiguous warning that an unsophisticated consumer would understand that doing so would restart the limitations period.

58. MCM violated 15 U.S.C. § 1692f in its February 22, 2017 letter, including by soliciting a partial payment of the debt from the consumer, thus luring the consumer away from the shelter of the statute of limitations, without providing an unambiguous warning that an unsophisticated consumer would understand that doing so would restart the limitations period.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that MCM violated 15 U.S.C. § 1692f;

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;

c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

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d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and

f) Awarding such other and further relief as the Court may deem just and proper.

COUNT III
VIOLATION OF 15 U.S.C. § 1692e
Midland Funding

59. Plaintiff repeats and re-alleges each factual allegation above.

60. MCM violated 15 U.S.C. § 1692e in its June 8, 2016 and February 22, 2017 letters, which were sent to collect a debt on behalf of Midland Funding.

61. Midland Funding, by virtue of its status as a "debt collector" under the FDCPA, is liable for the conduct of MCM—the debt collector it engaged to collect a debt from Plaintiff on its behalf.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that Midland Funding violated 15 U.S.C. § 1692e;

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;

c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

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d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and

f) Awarding such other and further relief as the Court may deem just and proper.

COUNT IV
VIOLATION OF 15 U.S.C. § 1692f
Midland Funding

62. Plaintiff repeats and re-alleges each factual allegation above.

63. MCM violated 15 U.S.C. § 1692f in its June 8, 2016 and February 22, 2017 letters, which were sent to collect a debt on behalf of Midland Funding.

64. Midland Funding, by virtue of its status as a "debt collector" under the FDCPA, is liable for the conduct of MCM—the debt collector it engaged to collect a debt from Plaintiff on its behalf.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

a) Adjudging that Midland Funding violated 15 U.S.C. § 1692f;

b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of $1,000.00;

c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);

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d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and

f) Awarding such other and further relief as the Court may deem just and proper.

TRIAL BY JURY

65. Plaintiff is entitled to and hereby demands a trial by jury.

Dated: June 7, 2017.

Respectfully submitted,

s/Joseph Panvini
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